

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF §
AMERICA, §
§ CIVIL ACTION NO.
PLAINTIFF, § 1:23-CV-00853-DAE
§
V. §
§
GREG ABBOTT, IN HIS §
CAPACITY AS GOVERNOR OF §
THE STATE OF TEXAS, AND §
THE STATE OF TEXAS, §
§
DEFENDANTS. §

ORAL DEPOSITION OF
CARLOS RUBINSTEIN
JULY 9, 2024

ORAL DEPOSITION OF CARLOS RUBINSTEIN, produced as
a witness at the instance of the Plaintiff and duly
sworn, was taken in the above styled and numbered
cause on Tuesday, July 9, 2024, from 9:34 a.m. to
p.m., before TAMARA CHAPMAN, CSR, RPR-CRR in
and for the State of Texas, reported by computerized
stenotype machine, at the U.S. Attorney's Office for
the Western District of Texas, 903 San Jacinto
Boulevard, Austin, Texas, pursuant to the Federal
Rules of Civil Procedure and any provisions stated
on the record herein.

Job No. CS 6783952

1 manager for the City of Brownsville?

2 A. That is correct.

3 Q. Go back to Exhibit 1, Page 1.

4 On the cover, it notes that you and
5 Herman Settemeyer prepared the report. Is that
6 right?

7 A. Correct.

8 Q. You mentioned earlier Mr. Settemeyer is
9 one of the partners with you at RSAH20?

10 A. That is correct.

11 Q. Looking at the table of contents on
12 Page 2, is there a way to break down the content of
13 what portions you drafted and which portions
14 Mr. Settemeyer drafted?

15 A. Not really, because we cooperated and
16 coedited the document as we were building it.

17 Q. Were either of you the primary drafter or
18 the one that kind of took the pen on it?

19 A. We transferred the pen between us. As I
20 made edits and then I'd send it to Herman. Herman
21 made edits, sent it back to me. So the pen moved
22 quite a bit. Herman started the initial draft and
23 we just took off from there.

24 Q. Turn to Page 3.

25 A. Yes, sir.

1 Q. The summary of opinions. Are these ten
2 items all of the opinions that you expect to offer
3 at trial in this case?

4 A. Yes. And in the document, we add
5 additional information as to the basis of our
6 opinion. We raise a lot of other questions, but
7 these are the ten opinions that we concluded with.

8 Q. For each of these ten, if we need to go
9 through them we can, but is your opinion and
10 Mr. Settemeyer's opinion the same?

11 A. They are, yes, sir.

12 Q. So you are both expressing the same
13 opinion as to all ten of these opinions?

14 A. Yes, sir.

15 MR. TEBO: Objection; form.

16 THE WITNESS: I apologize.

17 MR. TEBO: That's all right.

18 Q. Did you and Mr. Settemeyer disagree about
19 any opinions, either contained within the summary or
20 that are not expressed?

21 MR. TEBO: Objection; form.

22 A. No.

23 MR. HARRISON: So we've been going
24 about an hour. Do you want to take a break or --

25 THE WITNESS: Yes.

1 border in the segments we're talking about, that was
2 done in Minute 309.

3 Those are examples.

4 Q. I may have misheard in your answer, but I
5 just want to make sure. You had mentioned the
6 potential cooperation for a treatment plant and you
7 said that could be contemplated by a treaty. Did
8 you mean by a minute?

9 A. A minute.

10 Q. Okay.

11 A. If I said a treaty, I misspoke.

12 Q. And I may have misheard, too, so thank
13 you for clarifying.

14 A. Yeah. And to be clear, we have
15 cooperated, in (unintelligible) and also near
16 Tijuana.

17 Q. Yeah.

18 A. But I meant by a minute.

19 Q. Okay. That's what I thought. And I may
20 have misheard, too, so --

21 A. If I misspoke, I apologize. Thanks for
22 catching it.

23 Q. So if you look on Page 8 about midway
24 down right after the Footnote 17, it says: All
25 water use from the Rio Grande requires a water right

1 from the TCEQ.

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. And it cites to what we've talked about
5 before, Chapter 303 of the Texas Administrative Code
6 and then also the Texas Water Code that's 11.081.
7 Correct?

8 A. Correct. And others, but yes, in
9 particular.

10 Q. And so you need a permit -- a person
11 needs a permit if they're going to store, take, or
12 divert water?

13 A. The only time you do not need a permit is
14 if you're going to put it to domestic or livestock
15 use and your use is going to be 200 acre-feet or
16 less. Those are permit-exempt conditions absent
17 that in an emergency use, like, you're going to have
18 to fight a fire.

19 Q. Okay.

20 A. Other than that, you absolutely need a
21 permit. Fair enough?

22 Q. And the statute that Texas Water Code
23 specifically excludes the domestic livestock use
24 that you just mentioned?

25 A. It is a statutory exemption. You are

1 correct.

2 And to be clear, livestock use is
3 watering your cows. It is not watering the pasture.
4 That's irrigation. That requires a permit. It is
5 that specific.

6 Q. And so a permit, then, is required for
7 the storage, taking, or diversion of water under the
8 Texas Water Code. Is that correct?

9 A. Yes, sir.

10 Q. So what is a storage?

11 A. Storage, we talked about it several times
12 this morning. If you build a structure
13 perpendicular to the banks, that retains water and
14 it creates a pool behind it, that gives you a
15 storage right. That gives you a storage purpose.
16 Fair enough?

17 Q. So what would -- so are there other
18 examples of a storage besides that?

19 A. Yeah. Yes, you could have off-channel
20 storage where you take water from the river and you
21 have an off-channel impoundment. That also could be
22 storage.

23 Q. Do you need a water right or permit for
24 the off-channel impoundment?

25 A. Absolutely.

1 diverts?

2 A. No. Not -- you're going to be in trouble
3 if you do that. I think the Water Code is very
4 clear that you need a permit.

5 And there are other regulations that come
6 into play as well, not just the Water Code.

7 Q. So say you were talking about the
8 Maverick Dam and the canal. So if -- if the
9 Maverick -- if the entity that operates the Maverick
10 canal and reservoir or dam needs to do work to
11 stabilized the -- the river bank or something along
12 those lines, would they need a water permit to do --
13 or a water right permit to do that?

14 A. I don't know. I think it depends on
15 whether water will be consumed or required. I would
16 think that they're going to be doing more
17 maintenance work on their actual canal.

18 I've been to the diversion point many
19 times. I've also been to the return point. It is a
20 substantial well-constructed facility there. Does
21 it need -- I'll tell you what the biggest problem
22 there is, is the naturally occurring giant cane. It
23 is prolific there. And that impacts water more
24 than -- and could impact navigation as well. Huge
25 problem there. But I don't see the Maverick

1 time-beneficial ways in which we have developed both
2 countries to move people and goods, that the river
3 can ever compete. I just don't see it.

4 Q. And the rest of Paragraph 8 we -- we've
5 already talked about the Brownsville Weir Dam and
6 those issues.

7 I'll move on to Paragraph 9 where it
8 says: Dredging the Rio Grande would be a
9 never-ending project. Inflows to the Rio Grande
10 would cause never-ending silt accumulation which
11 would need to be maintained. Would IBWC be the
12 entity responsible?

13 Did I read that correctly?

14 A. You did.

15 Q. Are you aware of any federal or
16 nonfederal navigation projects that don't require
17 maintenance dredging?

18 A. No, it's -- I -- the statement that I'm
19 making the basis for it is the fact that I know for
20 a fact that any time water moves and is somehow
21 impeded, it will cause siltation.

22 And that -- and it's -- the Amistad Dam
23 has to be re-rated every ten years because it's
24 silting up. Falcon Dam has to be re-rated every ten
25 years because it's silting. Anzalduas is re-rated.

1 The discharge channel below Anzalduas is re-rated.
2 That's what water does.

3 Q. So dredging seems to be a fact of life?

4 A. Well, yes. And -- and actually, I'm glad
5 you said that because the Brownsville ship channel
6 in any lifetime has had to be redredged multiple
7 times as an example. But it shouldn't surprise
8 anybody that that occurs. That's just a factor of
9 what happens with water.

10 Q. And IBWC does sediment removal dredging
11 in the Rio Grande and around Amistad and Falcon?

12 A. No. The -- no. Dredging, believe it or
13 not, is one of the most cost -- silt removal is one
14 of the most cost -- costly things you can undertake.
15 Because it's not -- again, it's a never-ending deal.

16 The only time that I am aware that IBWC
17 dredged a portion of the river is that time that I
18 mentioned earlier where the river, because of low
19 flow, stopped flowing in the Gulf, and they went out
20 there with a backhoe or two and they dug out the
21 channel so it couldn't go back in.

22 Dredging is very cost prohibitive. But
23 in some situations, you don't have a choice. Right.
24 Now, it doesn't mean that IBWC won't go down to a
25 gaping session and dredge it out to return to the

1 previous curve that they have. Again, it's not what
2 you want to be doing.

3 Q. Paragraph 10 poses the question: What
4 would be the environmental impacts associated with
5 such a project?

6 So are you suggesting that before such a
7 project began, the environmental impacts need to be
8 studied?

9 A. Yes. And I think your experts pointed to
10 the same thing when they referenced NEPA. I think
11 we're both saying the same thing different ways.

12 Q. No. 11 on the bottom of -- bottom of --
13 bottom of Page 11 of Exhibit 1 says: Who would be
14 the economic beneficiaries of this project?

15 By "projects" you mean the dredging
16 project?

17 A. The dredging to restore navigational
18 purpose. Who's going to benefit from that when the
19 need doesn't exist? That's what we're asking.

20 Q. The need doesn't exist currently, but
21 there's a possibility that there may be a need in
22 the future?

23 A. Again, I think it's a -- it's what you
24 asked earlier. It's -- for that need to exist, it
25 would have to be one, feasible; two, in my mind more

1 cost competitive than the other existing intermodal
2 ways. I don't see that occurring.

3 Q. So Subsection A of Paragraph 11 -- of
4 Page 11.

5 A. Subsection A?

6 Q. Subsection 11(A).

7 A. Yes, sir.

8 Q. It says: Both Carlos Rubinstein and
9 Herman Settemeyer have attended numerous meetings
10 with the IBWC both United States and Mexico
11 sessions, as well as with the Department of State
12 during their careers with the TCEQ. Never was
13 constructing a project to make the Rio Grande
14 commercially navigable ever discussed.

15 Is it the mission of IBWC to develop and
16 construct projects to aid in navigation?

17 A. I don't know. We're just stating the
18 fact. Navigation and the desire to make the river
19 navigable has never come up, ever. That's all we're
20 saying.

21 And IBWC has purview, direct purview,
22 over the Rio Grande. In those discussions, it has
23 never come up. That's all we're saying.

24 And then, again, we go back to the fact
25 that navigation is referenced in the treaty, yet it

1 doesn't exist. There's no purpose for it. No
2 demonstrative use.

3 Q. And the same question as to Department of
4 State. Is it the mission of the State Department to
5 develop and construct projects in aid of navigation?

6 A. IBWC is a -- my term -- a subsidiary of
7 the Department of State. It does deal as an
8 international stream to -- with our relations to
9 Mexico. That is a purview of the Department of
10 State. I -- in my experience, significant issues on
11 the Rio Grande involve both the IBWC and the
12 Department of State, that's why we mentioned that.

13 Q. 11(B) says -- I don't know, about halfway
14 down: At no time have they witnessed a need for, or
15 a use of the river for commercial navigation.

16 What do you mean by "commercial
17 navigation"?

18 A. I think we've talked about it at length
19 today. It's the -- the type of navigation
20 associated more, in my mind, with what you see on
21 the intercoastal canal, at the active ports along
22 the Gulf. What you even see on the Mississippi
23 River. The movement of large freight using very
24 large boats to move oars, timber, materials. Never
25 has that occurred in my lifetime in the Rio Grande.

1 Q. If Congress authorized a project to aid
2 navigation on the Rio Grande, is it your testimony
3 that such a project requires the federal government
4 to obtain a water right from Texas?

5 A. Okay. One more time.

6 Q. Sure.

7 A. Or if you can just expand on it,
8 because I -- the way you asked it, yes.

9 Q. Okay. Well, I want to make sure -- I
10 want to make sure we're not talking past each other,
11 so...

12 A. Yeah.

13 Q. If Congress authorizes a project to aid
14 navigation on the Rio Grande, is it your testimony
15 that that project requires a water right permit from
16 the State of Texas?

17 A. How else are you going to give it that
18 use, and where is the water going to come from to
19 satisfy that project?

20 Without knowing the particulars of how
21 you would make it navigable, yes, absolutely. I can
22 see where that's going to require a water right, at
23 a minimum, just to add the use.

24 Q. What federal civil works projects in
25 Texas has the federal government obtained water

1 rights or used permits from TCEQ for?

2 A. One that comes to mind are some
3 reservoirs in East Texas that the Corps, I believe,
4 operates. I'm sure there are many others. I
5 wouldn't be surprised if some of the Highland Lakes
6 had Army Corps attachment. I would not be
7 surprised. There might be numerous.

8 Q. Are you aware of any that -- any water
9 rights permits for projects that were done in aid of
10 navigation?

11 A. I'm not aware of that, sir.

12 Q. So are you saying that any federal
13 project to aid navigation is impossible because the
14 Corps cannot obtain a water right permit from the
15 State of Texas?

16 A. On the Rio Grande?

17 Q. On the Rio Grande.

18 A. I don't know how you overcome -- as a --
19 when it comes to water issues, one of the critical
20 things that you first have to overcome, and the EPA
21 is a stickler on this, is purpose and need. Where
22 is the need?

23 I don't see how you overcome that
24 obstacle. I don't think you get to a credible
25 application, but you're entitled to file one, you

1 Grande would be economically unfeasible.

2 And I think we've talked today about
3 how -- you didn't do specific calculations for
4 analysis of -- of quantifying those analyses for
5 your report?

6 A. I did not. The statement is -- I think
7 we've covered it during the day -- based on my
8 experience and that of Herman's as well. The fact
9 that there's no need, the fact that you can't
10 quantify a benefit, can't even point to who would be
11 using it. It's just infeasible.

12 Q. Infeasible from an economic perspective?

13 A. And a sustainability. Remember I
14 mentioned viable, feasible, and sustainable? I
15 don't even think it's viable. I don't think it
16 meets any of the three. But yes.

17 Q. And the -- your basis for that is not as
18 an economist but based on your experience and
19 background?

20 A. Absolutely.

21 Q. So if you go down, the third line,
22 actually move up one, it says: Most anything can
23 have an engineered solution.

24 A. Okay. Now, let me find it.

25 Q. Oh, sorry. Same paragraph, third line

1 Q. Are there any other topics that you
2 intend to provide opinion testimony on at trial that
3 we have not discussed today?

4 A. Not that -- I -- if -- if you would ask
5 me questions that would want to peel the onion back
6 some more, we could. But they would be along the
7 topics that we talked about. As you interview other
8 witnesses and they provide testimony, it might
9 trigger something additional, but at this time, no.

10 MR. HARRISON: Can we go off the
11 record for a second.

12 (Break.)

13 Q. In Exhibit 1, are there any of the
14 opinions expressed here that you have that are
15 different than Mr. Settemeyer's?

16 A. I don't believe so. Not at all.

17 Q. And are there any of the bases for the
18 opinions in Exhibit 1 different between you and
19 Mr. Settemeyer?

20 A. The -- the vantage point at which we view
21 the river, Mr. Settemeyer, as you can surmise from
22 his résumé, has spent considerable much more time
23 than I ever did on the actual adjudication and the
24 permitting of water rights.

25 I correspondingly spend more time on the

1 there's no way to resolve it, they have to deny it.
2 It's not their choice.

3 Q. In other words, TCEQ would have to deny
4 the application, they don't even have an option?

5 MR. HARRISON: Objection; form.

6 A. Unless they can be overcome by special
7 conditions, yes.

8 Q. Is that statement also true for
9 applications to amend an existing water right to add
10 a nonconsumptive use such as navigation?

11 A. I believe so. Yes.

12 Q. Given your familiarity with existing
13 water rights on the Rio Grande, do you think it
14 likely that amending existing water rights to add
15 navigation as an incidental use would prejudice
16 superior right -- would prejudice preferential water
17 use rights?

18 A. For all the reasons I've stated during
19 the deposition, they absolutely would.

20 Q. During your tenure at TCEQ, have you ever
21 rejected or witnessed being rejected or modified an
22 application -- I'm sorry. Let me rephrase that
23 question. It got a little messy.

24 During your tenure at TCEQ, have you ever
25 rejected or modified an application for a water

1 impacts on water rights and water rights holders --
2 or, I'm sorry, water rights holders?

3 A. Based on my almost a decade as being
4 specifically Rio Grande water, and more than a
5 decade dealing in -- actually, the vast majority of
6 my career dealing with the Rio Grande, no, I did not
7 need to perform a calculation.

8 Q. So just to ask, did you rely on your
9 years of experience at TCEQ, years living along the
10 river, your deep familiarity with the Rio Grande
11 River, to arrive at your opinions with respect to
12 the feasibility of improvements to enhance
13 navigation?

14 A. Absolutely.

15 MR. HARRISON: Objection; form.

16 THE WITNESS: Sorry.

17 A. Absolutely.

18 MR. TEBO: Thank you. No further
19 questions on cross.

20 MR. HARRISON: I don't have anything
21 else. Thank you, Mr. Rubinstein.

22 (Deposition concluded at 4:04 p.m.)
23
24
25